HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.117 OF 2005.

Mangesh Suryakant Parkhe. ...Petitioner

V/s.

The State of Maharashtra. ...Respondent

Shri H.D.Gole, for petitioner

Shri A.S.Gadkari, APP for respondent.

CORAM: A.M.KHANWILKAR,J
DATE : APRIL 21, 2005

P.C. :-

1. Heard the counsel for the parties.

2. I see no reason to interfere with the concurrent view taken by the courts below, in so far as the finding of guilt recorded against the Petitioner for offence punishable under section 354 and 506 of the I.P.Code. That view is concurrent view, taken by the courts below on appreciating the evidence on record.

3. To get over this position, Shri Gole, the counsel for the petitioner contends that the complaint has been filed after five weeks and the delay has not been explained by the prosecution. This argument clearly overlooks the finding recorded by the trial court in

paragraph-12 of its decision. The court below has found that the prosecutrix was threatened by the petitioner and because of that threat, she did not dare to disclose the incident to any one. She disclosed the incident only after five weeks to her companion namely Dipali at the time of defecating by the side of road on day in Diwali vacation and thereafter, on the next day, Dipali disclosed that incident to her mother. The courts below have accepted the explanation offered by the prosecution being natural. It is therefore, not open for this court to reappreciate the evidence to take a different view other than, the view taken by the courts below on this aspect. That is not the scope of interference in Revisional jurisdiction.

4. Mr.Gole the counsel for the petitioner, then contends that prosecution has not examined the Doctor who has had occasion to examine the prosecutrix. It is true that the prosecution has not examined the Doctor but that makes no difference to the recording of the finding of guilt. The examination of Doctor or testing medical evidence would have arisen, if the allegation was one of rape. That is not the case on hand. In the present case, the prosecution alleges that the prosecutrix who was at the relevant time, 7 or 8 years old was taken upstair of his house by the petitioner,

where she was made to sleep on a quilt on the ground and the incident in question took place. The nature of allegations about the incident do not require evidence of the Doctor to corroborate the same. In these circumstances, nonexamination of the doctor will make no difference to the finding of guilt recorded by two courts below, which is substantiated from the record.

5. Mr. Gole then contends that no independent witness has been examined by the prosecution. According to him Manisha could have been examined by the prosecution. However, this submission overlooks that Manisha was not eye-witness to the incident, whereas, she claims to have been told about the incident. In other words, her evidence was only hearsay evidence for the present case. The only evidence that can be the basis is that of the prosecutrix; as it is not the defence case that any other person was present at the relevant time and that person was not examined. The evidence of the prosectrix as well as of her mother which has been accepted by the two courts below, in my opinion, is sufficient to record finding of guilt. Non-examination of Manisha therefore, will make no difference.

6. Mr.Gole then contends that the date of incident

was initially recorded as 25th September, 1995, however, that date has been subsequently changed after 15 days by way of supplementary statement. This submission overlooks that the prosecutrix did not disclose the incident to any one because of the circumstances disclosed by her, she was only 7 to 8 years of age at the relevant time. The incident was disclosed after five weeks from the date of incident. In this background, if there was some mistake about the date of the incident and if, that has been corrected by the supplementary statement by the prosecutrix who was exposed to cross examination on that point and whose version has been accepted by the two courts below, in my opinion, change of date of the incident after 15 days will not vitiate the finding reached by the courts below about the actual incident as had occurred. The courts below have considered this aspect in paragraph No.4 of the Judgment and it is a possible view. If, it is a possible view, it is not open for this court to interfere with the same in exercise of revisional jurisdiction, merely because another view can also be taken in the same fact situation of the case.

7. Mr. Gole next contends that the courts below have not properly appreciated the defence version. This submission clearly overlooks the discussion in the

impugned Judgment in paragraph No.9. The version that the petitioner has been falsely implicated in the present case out of vengeance, only to avoid the liability of the father of the complainant, has been considered by the courts below. The courts below have found that except putting certain suggestions, no evidence has been produced by the defence to establish the fact asserted by them. No fault can be found with the said finding recorded by the courts below. If it is so, it is not a case of manifest error committed by the lower court. On the other hand, no fault can be found with the approach of the lower court and view taken by the court is a possible view. Hence it is not open for this court to exercise its revisional jurisdiction.

8. Lastly, Mr. Gole contended that the punishment imposed by the courts below is excessive. He submits that Section 354 provides for alternative punishment. In the present case, the applicant has been sentenced to undergo R.I. for 3 months and to pay fine of Rs.1,000/-(one thousand) i.d. to suffer S.I. for 3 weeks, for the offence punishable under section 506 of the I.P.Code and to suffer R.I. for 2 years and to pay fine of Rs.1,000/-(one thousand) i.d.to suffer S.I. for 3 months, for the offence punishable under section

354 of the I.P.Code. The trial court in paragraph No.24 has examined the plea of the petitioner that leniency be shown. Accordingly, the trial court, in the fact situation of the present case awarded proper punishment as the victim who was sexually molestated was only of 7 to 8 years of age at the relevant time.

9. Even the Appellate court has considered the submission of the defence on the point of sentence. There are no mitigating circumstances. Punishment awarded by the lower courts is appropriate. In exercise of revisional jurisdiction, I see no reason to interfere with the view taken by the courts below even on the point of sentence. In my opinion, there is no error either in the approach or conclusion reached by the courts below.

10. Accordingly, this petition is dismissed as devoid of merits.